UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,439	07/14/2002	Scott C. Harris	DIY-C1	2498

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EXAMINER
FU, HAO

ART UNIT	PAPER NUMBER
3693	

NOTIFICATION DATE	DELIVERY MODE
07/26/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

scott@harrises.com
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Advisory Action *Before the Filing of an Appeal Brief*	Application No. *10/064,439*	Applicant(s) HARRIS, SCOTT C.
	Examiner HAO FU	Art Unit 3693

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>25 June 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*2-16, 18, 22-32 and 65-69*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

/Hao Fu/
Examiner, Art Unit 3693

 Continuation of 11. NOTE: Applicant's amendment filed on 06/25/2010 would overcome the previous rejections based on U.S.C. 112 and U.S.C. 101. However, Examiner respectfully disagrees with the arguments regarding to the rejections based on U.S.C. 103.

As per claim 6, 8, 22, 26, and 65, Fisher teaches a web server for hosting an auction site, which sends to bidders email messages that include information about the item which has been outbid in the auction. Fisher further teaches a prior email auction scheme. Email auction is performed when "bidders submit their bids on individual lots to an auctioneer via E-mail. The auctioneer reads the electronic mail bids and enters them in a database for bids. When the auction closes, the auctioneer notifies the winning bidders, usually via electronic mail" (see column 2, line 10-20). Thus, Fisher clearly teaches recognizing one word in at least one of the email messages to determine a desired action. Fisher's disclosure implies that the auctioneer recognizes the word "bid" in email and determines the bidders' desired action as placing bid on the item.

The only difference between Fisher's invention and the present invention is that Fisher does not use a "keyword recognition system" to recognize bidders' command in the email. It is understood that auctioneer described in Fisher is a human operator, and the improvement of the present invention is to replace the human operator with computerized keyword recognition system.

Examiner reasons that Fisher's deficiency is fulfilled by the Powell reference. The important teaching of Powell is not that a user can manipulate a webpage by email, it is that keyword recognition system, which recognizes user command in plain text in the email form, was known prior to the present invention. Powell teaches that a user sends an email with plain text command to a system, and then the software running in the system interprets command within the plain text and executes the user's desired action (see column 2).

Even though Powell is not related to auction, the prior art attempts to solve the same problem as Fisher does, which is to replace human operator with automated system (see column 5 line 18-22 of Fisher; also see column 1 of Powell). Therefore, Fisher and Powell can be properly combined by one of the ordinary skill in the art to come up with an invention similar to the present invention.

As per claim 9 and 25, Examiner notes when Fisher teaches that "electronic mail notification messages preferably contain the relevant merchandise information, the current high bid, the bid increment, etc." clearly represents Applicant's "session identification identifier that identifies said auction information, and that where said session identification indicator is a unique value that unambiguously represents an item in said auction information". Examiner reasons that session ID is a necessary for the bidder and the system to know which item is corresponding to the email. If the email does not contain an unambiguous session ID, the bidder and the system would have no idea which auction item the email is dealing with, and thus make the prior art inoperable. Therefore, Fisher's invention is required to have this feature.

As per claim 13 and 30, Examiner notes that the ability to, "enter a new bid by replying to the electronic mail message and sending it back to the system" as taught by Fisher represents Applicant's session ID included as part of a return address. Examiner reasons that session ID is a necessary for the bidder and the system to know which item is corresponding to the email. Moreover, if session ID is not included as part of a return address, the prior art system would not know where to send the reply email. An auction site deals with thousands or millions of auction a day. Without a session ID to identify each auction item, the prior system would be inoperable.

As per claim 3, 4, and 68, applicant admits that cell phones were known to send and receive email. Since the bidder's command is merely written in plain text and the cell phones do not need to perform any conversion to produce the email as claimed, applicant's argument is unpersuasive.

As per claim 5, Feinberg teaches an automated auction system, in which users are required to submit a user-name and password with each bid. The prior art teaches that this is done as a security measure to verify the user. The combination of Fisher and Powell teaches placing a bid via email. Therefore, if the combination of Fisher and Powell were to be modified to increase security level, one of ordinary skill in the art would come up with requiring a user-name and password for each bid via email.